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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 69

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,
Petitioners,

—v.—

JACKSONVILLE TERMINAL COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

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May, 1968

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INDEX

PAGE

Questions Presented 1

Statement 2

ARGUMENT 13

CONCLUSION 35

CITATIONS

CASES:

American Dredging Co. v. Local 25, 338 F.2d 837 (3d Cir. 1964), *cert. denied*, 380 U.S. 935 (1965) 22, 24

American Federation of Labor v. Swing, 312 U.S. 321 (1941) 34

Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen, 385 U.S. 20 (1966), *aff'g* 362 F.2d 649 (5th Cir. 1966) 11, 13, 15, 30

Avco Corporation v. Aero Lodge No. 735, No. 445, O.T. 1967, 36 U.S.L.W. 4288 (1968) 23

Bakery & Pastry Drivers & Helpers Local 802 v. Wohl, 315 U.S. 769 (1942) 33

Brotherhood of Railway and Steamship Clerks v. Florida East Coast R. Co., 384 U.S. 238 (1966) 3, 13, 17, 18, 19

Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co., 362 F.2d 649 (5th Cir. 1966) 10

Brotherhood of Railroad Trainmen v. Chicago R. & I. R. Co., 353 U.S. 30 (1957) 27

PAGE

Brotherhood of Railroad Trainmen v. New York Cent. R. Co., 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957) 17
Bruno v. Northeast Airlines, 229 F. Supp. 716 (D. Mass. 1964) 28
Building Service Employees v. Gazzam, 339 U.S. 532 (1950) 33, 34

C. D. Perry & Sons, Inc. v. Robilotto, 39 Misc. 2d 147, 240 N.Y.S. 2d 331 (Sup. Ct. 1963) 22
California v. Taylor, 353 U.S. 553 (1957) 20
Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) 23
Cox v. Louisiana, 379 U.S. 536 (1965) 32
Curtis v. Tozer, 374 S.W. 2d 557 (Mo. App. 1964) 22

DiGiorgio Fruit Corp. v. NLRB, 191 F.2d 642 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 869 (1951) 28

Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711 (1945) 17, 27
Etting v. Bank of the United States, 11 Wheat. 59 (1826) 25

Florida East Coast R. Co. v. United States, 386 U.S. 544 (1967) 2
Florida Lime & Avocado Growers Inc. v. Paul, 373 U.S. 132 (1963) 14, 19
Food Employees Local 590 v. Logan Valley Plaza, Inc., No. 478, O.T. 1967, 36 U.S.L.W. 4385 (1968) 34
Ford v. Boeger, 236 F. Supp. 831 (E.D. Mo. 1964) 22

Garner v. Teamsters Union, 346 U.S. 485 (1953) 16, 18
General Building Contractors' Ass'n v. Local Union No. 542, 370 Pa. 73, 87 A2d 250 (1952) 22

PAGE

Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949) 32, 33

Hanna Mining Co. v. District 2, 382 U.S. 181 (1965) 18
Hill v. Florida, 325 U.S. 538 (1945) 20
Hines v. Davidowitz, 312 U.S. 52 (1941) 20, 21
Hughes v. Superior Court, 339 U.S. 460 (1950) 33

Incres S.S. Co. v. International Maritime Workers Union, 372 U.S. 24 (1963) 18
International Brotherhood of Electrical Workers v. NLRB, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966) 28, 29
International Union v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949) 18

Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949) 33
Local Union No. 25 v. New York, N.H. & H.R. Co., 350 U.S. 155 (1956) 27, 28

Marine Engineers Beneficial Ass'n v. Interlake Steamship Co., 370 U.S. 173 (1962) 29
Markham & Callow v. International Woodworkers, 170 Ore. 517, 135 P.2d 727 (1943) 22
Marsh v. Alabama, 326 U.S. 501 (1946) 34
McCarroll v. Los Angeles Dist. Council, 49 Cal. 2d 45, 315 P.2d 322 (1957), *cert. denied*, 355 U.S. 932 (1958) 22
Missouri Pac. R. Co. v. Norwood, 283 U.S. 249 (1931) .. 20

NLRB v. Interior Enterprises, 298 F.2d 147 (9th Cir. 1961) 28

Ohio ex rel. Eaton v. Price, 364 U.S. 263 (1960) 25

PAGE

Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, 382 Pa. 326, 115 A2d 733 (1955), *cert. denied*, 350 U.S. 843 (1955) 22

Railway Employes' Department v. Hanson, 351 U.S. 225 (1956) 19
Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947) .. 19

San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) 16, 19, 20, 25
Shaw Elec. Co. v. International B'hood of Elec. Workers, 418 Pa. 1, 208 A.2d 769 (1965) 22
Southern Bus Lines v. Amalgamated Ass'n of Street Elec. Ry. & Motor Coach Employees, 205 Miss. 354 38 So.2d 765 (1949) 22

Teamsters Union v. Oliver, 358 U.S. 283 (1959) 20
Terminal R. Ass'n v. Brotherhood of Railroad Trainmen, 318 U.S. 1 (1943) 20
Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 24

United Electrical, Radio & Marine Workers v. Westinghouse Elec. Corp., 65 F. Supp. 420 (E.D. Pa. 1946) 22
United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 24

CONSTITUTIONAL PROVISIONS AND STATUTES:

United States Constitution:
First Amendment 31, 32, 33, 34
Fourteenth Amendment 31, 32, 33

Interstate Commerce Act:
Section 1(3), 49 U.S.C. §1(3) 26

PAGE

Labor Management Relations Act:
Section 2, 29 U.S.C. §152 26
Section 2(2), 29 U.S.C. §152(2) 26
Section 2(3), 29 U.S.C. §152(3) 26
Section 2(5), 29 U.S.C. §152(5) 26
Section 8(b), 29 U.S.C. §158(b) 28, 29
Section 8(b)(4), 29 U.S.C. §158(b)(4) 16, 19, 29
Section 301 ..... 23, 24

Norris-LaGuardia Act:
Section 1, 29 U.S.C. §101 21
Section 2, 29 U.S.C. §102 21
Section 4, 29 U.S.C. §104 21
Section 5, 29 U.S.C. §105 21
Section 6, 29 U.S.C. §106 24
Section 7, 29 U.S.C. §107 21
Section 13(d), 29 U.S.C. §113(d) 21

Railway Labor Act:
Section 1 First, 45 U.S.C. §151 First 26
Section 1(a), 45 U.S.C. §151(a) 19
Section 2 Seventh, 45 U.S.C. §152 Seventh 18

Florida Transportation Act, 13A Fla. Stat. Ann. 351.01-351.30 11

Florida Restraint of Trade Acts, 16 Fla. Stat. Ann. 542.01-542.12 11

MISCELLANEOUS:

Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297 (1954) 17

Frankfurter & Greene, *The Labor Injunction* (1930), p. 220 23

S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 19 27

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1378

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,

Petitioners,

v.

JACKSONVILLE TERMINAL COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the Railway Labor Act or other Federal railway legislation supersede the application of state law to restrain secondary pressure by railway employees against a terminal carrier with which they do not have a dispute cognizable under the processes of the Railway Labor Act, when the conduct of the employees, unless restrained, threatens the economic strangulation of the economy of the state.

2. Whether the Norris-LaGuardia Act deprives a state court of jurisdiction to grant injunctive relief in an action brought exclusively under state law.

3. Whether the jurisdiction of a state court to adjudicate an action brought exclusively under state law is preempted by the jurisdiction of the National Labor Relations Board ("NLRB") under the Labor-Management Relations Act ("LMRA"), when the controversy which led to the state court action is entirely within the railroad industry and the labor relations of all participants directly with each other are subject to the Railway Labor Act and not to the LMRA.

4. Whether the First and Fourteenth Amendments prevent a state court from entering a limited injunction against picketing of an employer which has the avowed purpose and effect of coercing that employer to cease doing business with another employer in violation of state statutes.

STATEMENT

The Jacksonville Terminal Company ("Terminal Company" or "respondent") is a Florida corporation which operates a passenger and freight rail terminal facility in Jacksonville, Florida. (R. I, 1-2, 32). Through the terminal property flow the routes of the so-called "Jacksonville Gateway"—the rail gateway into peninsular Florida. The two carriers (as of the time of the hearing in this case)[1] whose lines make the main use of the terminal property are Atlantic Coast Line Railroad Company ("Coast Line") and Seaboard Airline Railroad Company ("Seaboard").

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[1] Subsequent to the completion of the record in this case, the Seaboard and the Coast Line merged, effective July 1, 1967. See *Florida East Coast R. Co.* v. *United States*, 386 U.S. 544 (1967). For the sake of clarity, in this brief we shall refer to the separate ownership of the Coast Line and Seaboard, which existed at the time of the making of the record, in the present tense.

Seaboard and Coast Line operate throughout the southeastern United States. The two other railroads using the terminal facilities at the Jacksonville terminal are the Southern Railway System ("Southern") and the Florida East Coast Railway Company ("FEC"). The FEC's line runs down the east coast of Florida from Jacksonville to Miami. Each of the four carriers, at the time of the hearing in this case, owned 25 percent of the stock of the Terminal Company.[2] (R. I, 2; R. II, 147; R. IV, 22)

The FEC—which is not a party to this suit—has been involved in labor disputes with its employees for many years. For more than five years there has been a strike by the nonoperating employee unions against the FEC. See *Brotherhood of Railway and Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966). On April 24, 1966, certain of the FEC's operating unions, the petitioners here—the Brotherhood of Railroad Trainmen ("BRT"), the Order of Railway Conductors and Brakemen ("ORC &B"), and the Brotherhood of Locomotive Firemen and Enginemen ("BLF&E")—also went on strike against the FEC. (R. I, 69)

Terminal Company and the principal railroad users of its facilities—the Coast Line, Seaboard and Southern—had no dispute with any of their own employees. (R. III, 55, 102-103, R. IV, 24, 52) Nonetheless, in the early hours of May 4, 1966, petitioners[3] threw a picket line around all

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[2] Pursuant to the merger of Seaboard and Coast Line (see note 1, *supra*), the merged carrier succeeded to the ownership of 50 percent of the stock in Terminal Company.

[3] There was a dispute as to whether the ORC&B and BLF&E were involved in the picketing. It was established that the names of these organizations were on the picket signs used by the pickets (see page 8 n. 8, *infra*), but that their names were covered with a tape. The state courts included the ORC&B and the BLF&E in the injunction. For our response to the petitioners' argument with respect to these

the pedestrian and rail entrances to the terminal property, except, interestingly enough, one rail entrance which was solely a point of entrance and exit for FEC movements. (R. III, 91-92; R. IV, 9-17; Plaintiff's Exhibit 1)

Ninety-five percent of the United States mail carried into or out of Florida—2,000,000 sacks each month—is handled through the Jacksonville Terminal. (R. I, 14; R. IV, 13, 21, 56) The FEC handles no United States mail. (R. I, 15)

The Coast Line and the Seaboard are, together with the FEC, the sole rail carriers serving peninsular Florida. The FEC serves only the east coast of Florida and not central Florida and the Gulf coast of Florida—including the Tampa area—whose sole rail service was by the Seaboard and the Coast Line.

The freight movements handled through the Jacksonville Terminal involve shipments to markets throughout the country of large quantities of perishables, such as the Florida citrus crops and other fruit and vegetables. Shipments are made of many other nonperishable commodities, on which the industrial economy of Florida depends and on which manufacturing and farming enterprises in other parts of the country rely. (R. IV, 55-57)

The Jacksonville Terminal property is not merely a "terminal" where freight or passenger movements begin and end. It is a place *through* which freight or passengers move by rail. This is due to the strategic location of the terminal property athwart the main line of the Coast Line into Florida, and athwart one of the principal lines of the Seaboard into Florida. Virtually all the freight carried by Coast Line *on its own line* to and from the Florida

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two brotherhoods, which is based on the Norris-LaGuardia Act, see note 22, page 24, *infra*.

peninsula passes through—as a matter of necessity—the terminal property. (R. III, 159; R. IV, 58-61) The Seaboard line through Jacksonville also goes through the terminal property, and this line carries a substantial amount of all freight moved by Seaboard *on its own line* to and from the Florida peninsula. It includes virtually all the freight carried by Seaboard on its own line to and from the industrial complex of Duval County (in which Jacksonville is located). (R. III, 48-54; R. IV, 49) It is necessary in all cases for the Seaboard's freight trains to go through the Jacksonville Terminal property if cars are to be cut out for interchange or to be added in Jacksonville.[4] (R. III, 49-52, 81)

Besides these extensive moves of freight which pass through the terminal property on the lines of Coast Line and Seaboard without interchange, there is also a substantial amount of interchange of freight between lines which is carried on in the terminal property. The Coast Line and the Seaboard interchange freight with each other at this point.[5] (R. III, 48, 49, 51, 78)

The Seaboard and Coast Line interchange freight with the Southern, using the terminal property, and all these

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[4] On the map at page 7, the main line of the Coast Line coming from the north enters the terminal property at McQuade Street and exits from the terminal property at Dennis Street. The main line of the Seaboard which passes through the terminal property cuts across a neck of that property, entering near Acorn Street when coming from the north, and exiting near Stockton Street.

The line of the Southern does not extend south of Jacksonville in Florida.

[5] Subsequent to the merger, of course, the physical switching of such freight between the former Seaboard lines and the former Coast Line lines continues to occur in the Jacksonville Terminal property or makes use of its facilities, even though it does not now legally constitute an "interchange."

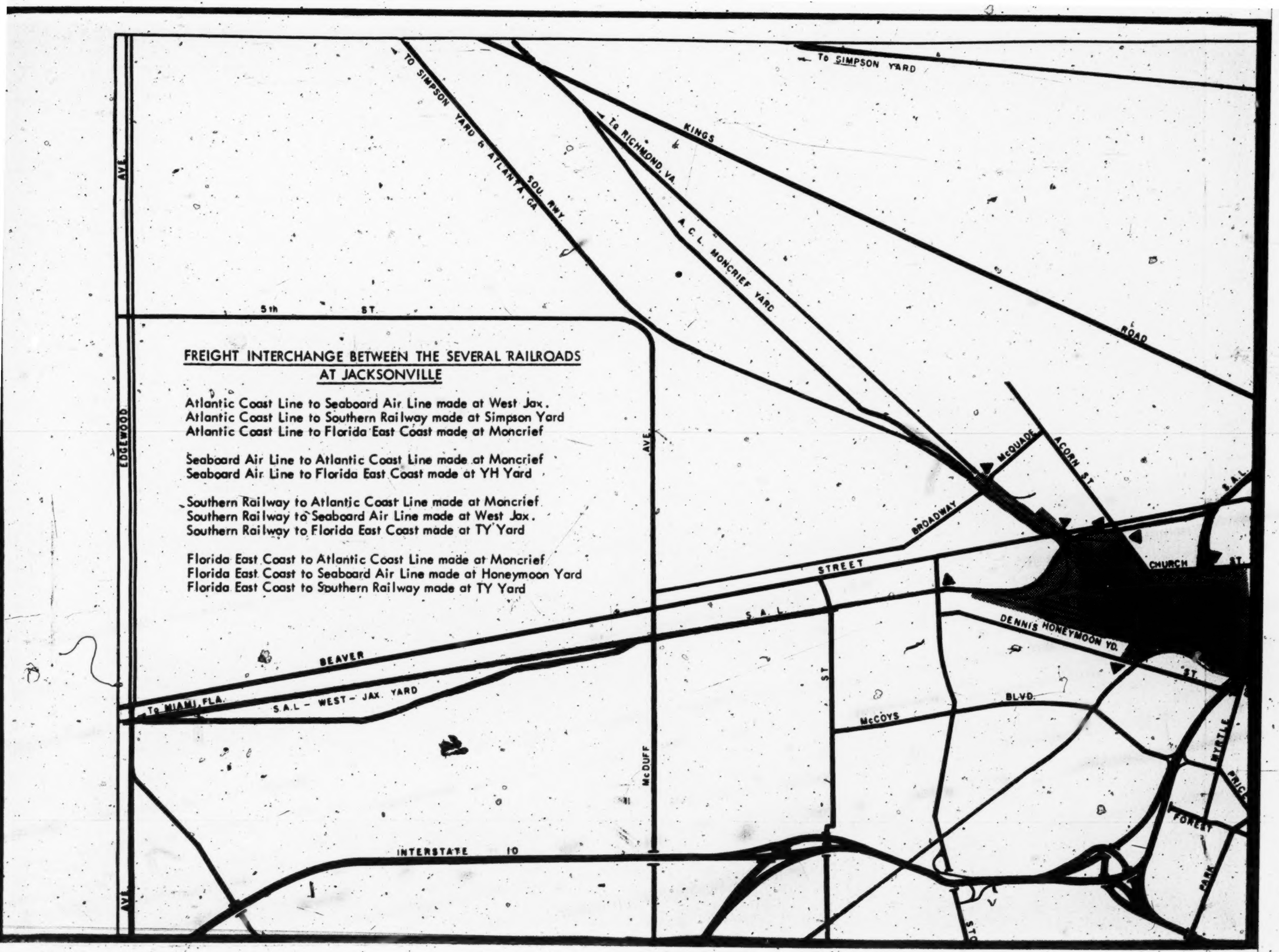
carriers interchange freight with the FEC at this point. (R. III, 74-75, 78-79; R. IV, 49, 64) The FEC's line runs up the east coast of Florida and terminates at the north bank of the St. Johns River in Jacksonville. Its yards are located some 12 miles on the other side of the St. Johns River from the Jacksonville Terminal yards. Those of its cars which are destined for points north of its lines are brought from its yard across the river into the terminal properties and there interchanged with carriers serving points north of Jacksonville. (R. III, 156; R. IV, 49, 64)

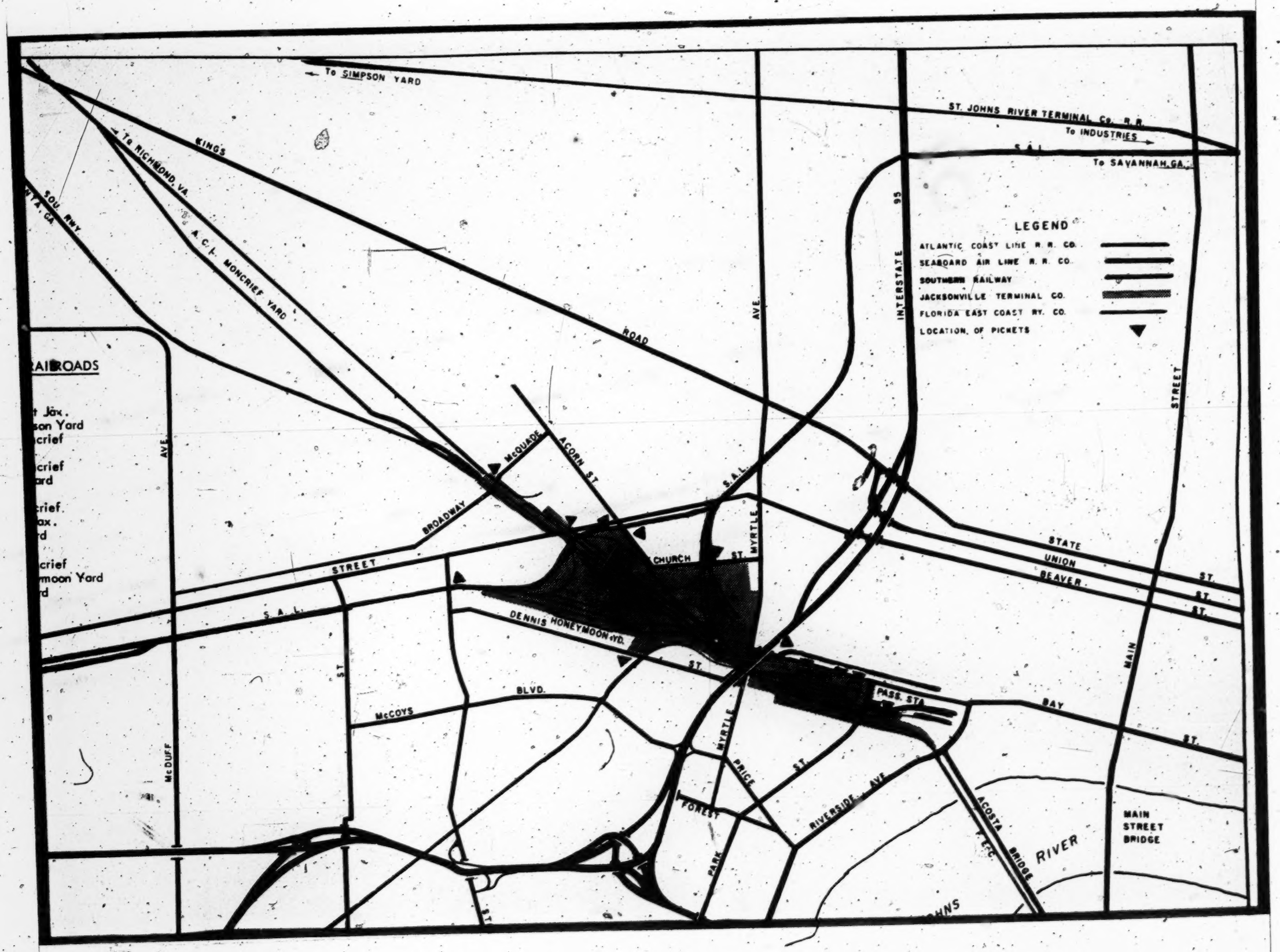
Carriers other than the FEC are the principal users of the Jacksonville Terminal property. Less than six-tenths of one percent of all passenger cars handled annually through the Jacksonville Terminal are handled for the FEC. About 70 percent of all freight cars handled through the terminal annually are for roads other than the FEC. (R. I, 10; R. III, 159; R. IV, 72)

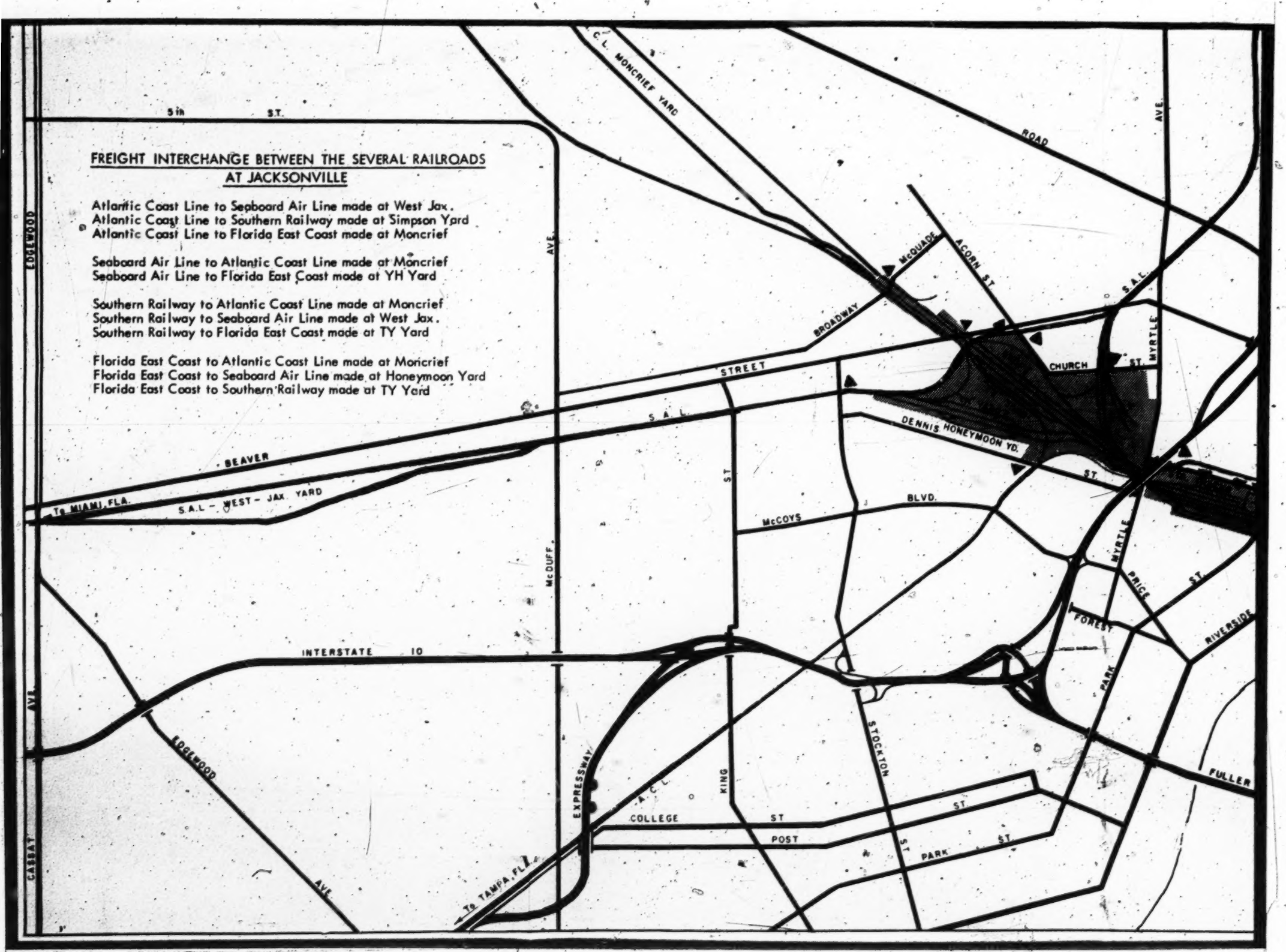
The map on page 7 shows the terminal property and the location of the pickets thrown up by petitioners on the morning of May 4, 1966.[6] The pickets were stationed at every entrance to the terminal, whether for passengers, employees or freight, and also at every public crossing around the perimeter of the terminal where train or switching movements may enter the terminal property from the outside.[7] (R. IV, 9-17) The picketing included, without exception, crossings where the trackage was under the sole control and ownership of either Coast Line, Southern, or Seaboard. (R. III, 49-50; R. IV, 57-61). This included

[6] It is adapted from Plaintiff's Exhibit 1.

[7] As indicated above, the sole exception was the point at the bridge across the St. Johns River where the FEC's line enters the terminal property. There is no public crossing of the track at this point, and hence the only entrance used by FEC car movements into the terminal property was not picketed. (Plaintiff's Exhibit 1)


FREIGHT INTERCHANGE BETWEEN THE SEVERAL RAILROADS AT JACKSONVILLE
Atlantic Coast Line to Seaboard Air Line made at West Jax.
Atlantic Coast Line to Southern Railway made at Simpson Yard
Atlantic Coast Line to Florida East Coast made at Moncrief
Seaboard Air Line to Atlantic Coast Line made at Moncrief
Seaboard Air Line to Florida East Coast made at YH Yard
Southern Railway to Atlantic Coast Line made at Moncrief
Southern Railway to Seaboard Air Line made at West Jax.
Southern Railway to Florida East Coast made at TY Yard
Florida East Coast to Atlantic Coast Line made at Moncrief
Florida East Coast to Seaboard Air Line made at Honeymoon Yard
Florida East Coast to Southern Railway made at TY Yard
TO SIMPSON YARD & ATLANTA, GA
SOU. RWY.
TO SIMPSON YARD
TO RICHMOND, VA.
A. C. L. MONCRIEF YARC
KINGS
ROAD
5th ST.
EDGEWOOD AVE.
AVE.
McQUADE
ACORN ST
S.A.L.
BROADWAY
STREET
CHURCH ST.
DENNIS HONEYMOON YD.
ST.
BEAVER
S.A.L.
TO MIAMI, FLA.
S.A.L. - WEST - JAX YARD
McCOYS
BLVD.
McDUFF
INTERSTATE 10
FOREST PARK


To SIMPSON YARD
To RICHMOND, VA.
KINGS ROAD
SOU RWY
A.C.L. MONCRIEF YARD
ST. JOHNS RIVER TERMINAL Co. R.R.
To INDUSTRIES
S.A.L.
To SAVANNAH, GA.
INTERSTATE 95
LEGEND
ATLANTIC COAST LINE R. R. CO.
SEABOARD AIR LINE R. R. CO.
SOUTHERN RAILWAY
JACKSONVILLE TERMINAL CO.
FLORIDA EAST COAST RY. CO.
LOCATION OF PICKETS
RAILROADS
McQUADE
ACORN ST
BROADWAY
STREET
CHURCH ST
MYRTLE
STATE
UNION
BEAVER
DENNIS HONEYMOON YD.
McDUFF
McCOYS
BLVD.
PASS. STA
BAY
MAIN
PRICE
FOREST
PARK
RIVERSIDE AVE
ACOSTA BRIDGE
RIVER
MAIN STREET BRIDGE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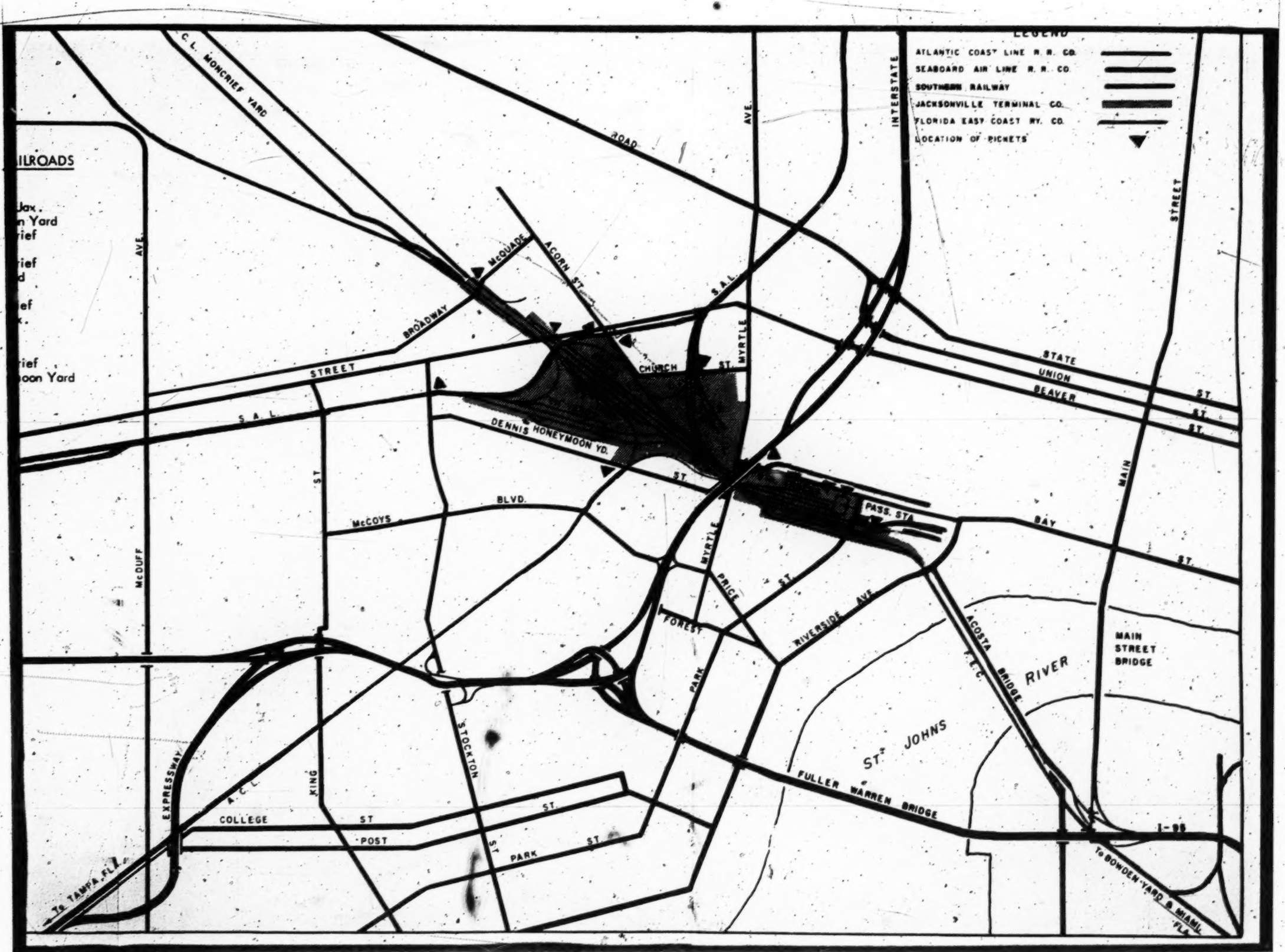
S.A.L. - WEST - JAX YARD
ST.
BLVD.
McCOYS
McDUFF AVE.
MYRTLE
PRICE ST.
FOREST
RIVERSIDE
PARK
INTERSTATE 10
EDGEWOOD AVE.
EXPRESSWAY
A.C.L.
KING
STOCKTON
FULLER
COLLEGE ST
POST ST
PARK ST
CASSAT AVE.
To TAMPA, FLA.


LEGEND
ATLANTIC COAST LINE R. R. CO.
SEABOARD AIR LINE R. R. CO.
SOUTHERN RAILWAY
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LOCATION OF TICKETS
C. L. MONCRIEF YARD
ROAD
AVE.
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ACORN ST.
S.A.L.
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DENNIS HONEYMOON YD.
ST
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BAY
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McDUFF
AVE.
ST
MYRTLE
PRICE
ST.
FOREST
PARK
RIVERSIDE AVE.
AGOSTA BRIDGE
F.E.C.
RIVER
MAIN
STREET
BRIDGE
ST. JOHNS
EXPRESSWAY
A.C.L.
KING
STOCKTON
FULLER WARREN BRIDGE
I-95
COLLEGE
ST
ST.
POST
ST.
PARK
ST.
To TAMPA, FLA.
To BOWDEN YARD & MIAMI, FLA.

crossings where the entering cars would not be those involved in interchange with the FEC but which would be handled solely by the Coast Line or by the Seaboard into, through and beyond the terminal area.

The text of the picket signs carried by the FEC employees is set forth in the margin.[8] The first words of exhortation on the signs were plain and unmistakable: "Do Not Cross."

As soon as the picket line was thrown up, operations within the terminal area began to grind to a halt. (R. III, 146) A complete standstill of all activity within the terminal area commenced—not simply the handling of interchanges with the FEC, but the principal activities of the terminal, which do not involve the FEC at all—the movements handled for the account of the Seaboard and the Coast Line, and the through moves by those carriers. The evidence showed that the picketing would have brought the operations of Seaboard "virtually .... to a standstill" (R. III, 48), so far as the 870 Seaboard cars and 40 Seaboard trains which utilize respondent's facilities each day were concerned. (R. III, 48, 50) Coast Line was experiencing the same result with regard to the 100,000 cars which carry military traffic, mail, citrus, vegetables and other goods in and out of the terminal property each month. (R. IV, 55-57) The 42 daily passenger trains operated by Coast Line and Seaboard connecting Florida and its resort areas with the population centers of the north were all subject to termina-

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[8] "FELLOW RAILROAD MEN
DO NOT CROSS OR ASSIST FEC
B OF RT ON LAWFUL
STRIKE
AGAINST FEC
PLEASE MAKE COMMON CAUSE WITH US
IN MAJOR DISPUTE AGAINST FEC"

(R. III, 64)

tion by the picketing. (R. III, 159) The only passenger station in Jacksonville is located on the terminal property. Thus, the picketing would, as petitioners' counsel admitted, "stop all movement of rail traffic through the Jacksonville Terminal" (R. III, 16) and the traffic thus stopped would be the bulk of rail traffic into and out of peninsular Florida.

The record also established that the picketing threatened disruption of many businesses dependent on rail services. The operation of the Jacksonville Port Authority, which is serviced by trains which must pass through the terminal (R. III, 21, 53), would have been curtailed and the Authority's handling of approximately 1,000,000 tons of cargo per year would have been drastically reduced. (R. III, 21) A large concrete company in the area with five separate facilities and an annual payroll of close to a million dollars (R. III, 29) could not operate if the rail moves through respondent's facilities were stopped. (R. III, 28, 53) The operations of the St. Regis Paper Company in Duval County, employing 1,600 persons, would have been halted by the picketing. (R. III, 38-40, 53) The same result would have prevailed with respect to a great number of other businesses and industries in the immediate area. Indeed, the same effect would have been experienced throughout the state. (R. III, 43, 54; R. IV, 25-27; Pl. Exs. 21, 22)

The picketing also threatened to bring the operations of respondent to a halt, including the services which it performs for a number of industries which have located next to the terminal property. (R. III, 82, 83, 147, 148; R. IV, 22, 25, 26, 54)

The picketing also threatened the effective stoppage of all mail transportation to Florida; 95 percent of the United States mail to and from Florida is handled through the

Terminal Company—all by carriers other than the FEC. (R. I, 15; R. IV, 13, 21, 54-56) For each 24 hours during which the Terminal Company's mail department is shut down, six days are required to catch up. (R. I; 15; R. IV, 21) Moreover, the Railway Express Agency, which is located immediately adjacent to the terminal, and which handles over 1,000,000 items per month, the bulk of which are perishable, would shut down if rail transportation through the terminal property were stopped. (R. IV, 1-6)

Thus, as the trial judge found on the basis of ample evidence in this matter, the establishment of pickets at the various exits and entrances to respondent's property served effectively to cut off all rail movement with respondent or through its terminal, due to the fact that the employees of respondent and the non-struck carriers using or moving through the terminal property honored the picket line. (R. II, 200) As the trial court aptly found on abundant evidence, the effect of the picketing was so great that, if permitted to continue, it would cause the "'economic strangulation" of Florida. (R. II, 200)

The picketing was first enjoined by a temporary restraining order and preliminary injunction issued out of the Federal District Court for the Middle District of Florida in a proceeding brought by Coast Line, Terminal Company, and Seaboard. The District Court's judgment was reversed, by a two-to-one vote, by the Court of Appeals for the Fifth Circuit, on the grounds that the Norris-La Guardia Act deprived the Federal courts of jurisdiction to enter such an injunction. *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (5th Cir. 1966). This court granted certiorari, 384 U.S. 1000 (1966), but affirmed the judgment of the Court of Appeals by an

equally divided Court, the argument having centered almost exclusively on the question whether the Norris-LaGuardia Act ousted the Federal courts' jurisdiction with respect to the matter. 385 U.S. 20 (1966).

Subsequent to the decision of the Court of Appeals for the Fifth Circuit holding the Federal courts to be without jurisdiction, this action was commenced in the Florida Circuit Court for Duval County by Terminal Company, on the grounds that the picketing either violated, or was an unlawful attempt to induce respondents to violate, the Florida Transportation Act, 13A Fla. Stat. Ann. 351.01-351.30, and the Florida Restraint of Trade Acts, 16 Fla. Stat. Ann. 542.01-542.12. The complaint also alleged that the picketing was an attempt to induce a secondary boycott, which is unlawful under Florida law, and alleged other violations of state law.

Counsel for petitioners admitted that the technique of the picketing was to "stop all movement of rail traffic through the Jacksonville Terminal." (R. III, 16) The objective of the picketing was to cause Terminal Company and the other carriers not connected with the FEC to cease interchanging with the FEC. (R. III, 16-17, 103-04) Indeed, the petitioners admitted in testimony before the trial court that if the respondent and the other carriers stopped interchange operations with the FEC, the picketing would be halted. (R. III, 103-104, 113-114, 120-121) Petitioners openly and plainly at one point took the position in this Court that if the respondent and the other carriers imposed an embargo upon the FEC, the picketing would cease.* (See

* This suggestion puts into perspective an occasional makeweight argument of petitioners, claiming that the terminal is a place of business of the FEC because the FEC has a single passenger train each day which uses the passenger station in the terminal and

Memorandum of Respondents [petitioner here] in Opposition to Petitioners' [respondent here] Application for an Order Staying Proceedings, *etc.*, No. 220, O.T. 1966, pp. 18-21; see also R. III, 120.)

The trial court, after a two-day hearing at which witnesses were examined orally, granted a limited[10] temporary injunction against the picketing. (R. I, 104; R. II, 105) A writ of prohibition against this order was denied by the Florida District Court of Appeal (Pet. App. 11a), and this Court denied certiorari to a petition by petitioners which raised a number of the points raised by the present petition. 385 U.S. 935 (1966).

In the meantime, the trial court, after an opportunity to the parties to present further evidence, issued a permanent injunction (R. II, 197; Pet. App. 1a), again limited in its application, against the picketing, on the ground that the picketing sought to coerce respondent into embargoing the FEC in violation of the Florida Restraint of Trade laws; to violate its obligations as a common carrier under the Florida Transportation Act; that the picketing was in the nature of an unlawful secondary boycott; and that the picketing was unlawful under certain other state common law grounds. (Pet. App. 5a) The Florida District Court of Appeal affirmed per curiam, 201 So.2d 353 (1967) (Pet. App. 7a), and the State Supreme Court dismissed an appeal and denied certiorari. (Pet. App. 9a-10a)

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because its passenger engines and coaches are there serviced by Terminal Company employees. These functions would not be affected by an embargo; yet the petitioners are evidently willing to call off the picketing without their cessation.

[10] At the terminal, one gate—the Bay and Stuart Streets gate—has been long designated for the use of FEC employees and another for the use of employees of Terminal Company and carriers other than the FEC. (R. I, 2; R. II, 125; R. IV, 16) The injunction permitted picketing at the FEC employees' gate. (Pet. App. 6a)

ARGUMENT

The factual situation which gave rise to this case has already been before the Court twice before. *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), *affirming* 362 F.2d 649 (5th Cir. 1966) *by an equally divided Court; Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co., certiorari denied*, 385 U.S. 935 (1966). In the latter case, petitioners petitioned for review of a state court order, urging several of the same questions they seek to have reviewed now; indeed, they could have urged all the issues now tendered. This Court denied certiorari then and should do so now.[11]

This case involves a unique set of facts, not likely soon to be repeated. The FEC's history of disputes with its employees is well known to this Court by now. See *Brotherhood of Railway and Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966); *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen, supra.* The FEC has been subject to an employee strike for over five years now—surely a unique record in the rail industry. The present case arose because of the peculiar geographic position of the Jacksonville Terminal as the gateway to peninsular Florida. It is the principal route into peninsular Florida for the Coast Line and the Seaboard, the two nonstruck carriers operating into peninsular Florida. As such, it offered petitioners a unique, and apparently irresistible, temptation to put secondary pressure on the Coast Line, the Seaboard, and the Terminal Company, with which they had

[11] While, to be sure, we interposed various procedural reasons for not granting the writ on that occasion, we were forced to concede that there was a "final judgment" of the state courts rendered in the collateral proceedings on the application for a writ of prohibition. See Brief in Opposition, No. 244, O.T. 1966, pp. 10-11. The larger portion of our argument section in opposition to certiorari then dealt with the merits. See *id.*, at 13-22.

no labor dispute, to try to force them to cease doing business with the FEC. —Of course, there is no dispute in this case as to the right of petitioners to picket up and down the entire length of FEC's own line from Jacksonville to Miami.

This effort, which the trial court found threatened the "economic strangulation" of the State of Florida (Pet. App. 4a), has now been repulsed by the state courts, acting pursuant to state laws designed to protect important state interests. Although the petitioners' dispute with the FEC continues, there is peace between petitioners and respondent and the other carriers. Petitioners are restrained only from escalating their dispute with the FEC in a manner which would injure innocent employers with which they have no labor dispute and the public at large. No issue of any general importance to labor relations in the railroad industry would be resolved by reviewing this case. Moreover, the issues raised were clearly decided correctly against petitioners.

1. *The Railway Labor Act and other Federal legislation do not prevent the application of state law to restrain the kind of secondary pressure involved in this case.*— None of the hallmarks of Federal preemption or supersession of state law developed by this Court are present in this case. This Court has stated:

> "The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963).

The pattern of congressional regulation of labor relations in the railway industry does not lead to the conclusion that state law is superseded in its application to the conduct exhibited in the present case; it leads directly to the opposite conclusion. Specifically, the regulatory mechanism and processes set up by Congress to deal with labor disputes in the railway industry do not apply at all to this conduct.[12]

Petitioners have successfully contended that the Federal courts may not enjoin their conduct. If state law is also inapplicable, as petitioners would have it, there would arise a "no-man's land" in which no agency of government, Federal or state, judicial or administrative, could restrain conduct of this character, despite its disastrous effects on the economy of an entire state. Indeed, this is the net result of petitioners' contentions.[13] This is a grotesque result. It is not rendered any less grotesque by the fact that had petitioners' conduct occurred in the context of an industry governed by the LMRA—presumably less vital to the nation's welfare than its rail transportation system—it would constitute unlawful secondary conduct. Congress could scarcely have intended to leave secondary conduct such as that of petitioners uniquely free of regulation.

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[12] Petitioners have admitted that at this point, under the Federal Railway Statutes, there exists the "jurisdiction of no agency." See Brief for Respondents (the present petitioners), No. 220, O.T. 1966, p. 48.

[13] In *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), the contention of petitioners that the Federal courts could not restrain their conduct was sustained by an equally divided court. In this case, petitioners claim in effect that no state court can regulate their conduct. It is common ground that their conduct is not within the jurisdiction of any of the agencies set up under the Railway Labor Act. While petitioners state that it is "arguable" that the NLRB has jurisdiction over their conduct, they have made it clear (Petition for Certiorari, No. 244, O.T. 1966, p. 16) that they deny the jurisdiction of the NLRB over them. This would appear to exhaust all the possible alternatives.

Petitioners' claim of supersession, which would produce this result, is little short of frivolous:

Unlike the National Labor Relations Act ("NLRA") and the LMRA, the Railway Labor Act does not create an administrative agency with authority to determine in the first instance whether conduct of employers and employees is protected or prohibited under Federal law. The NLRB has this authority in disputes outside the railroad industry. The LMRA added the provisions of Section 8(b)(4) to the NLRA, which provide a set of statutory guidelines to be administered by the NLRB as to prohibited and protected secondary conduct. The issues, then, in a non-rail context, are committed to an administrative regime. This Court has held the LMRA to preempt state jurisdiction over conduct which could arguably be prohibited or protected under Federal law, primarily because of the danger that the states would reach results inconsistent with what the NLRB might determine. See *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959); *Garner* v. *Teamsters Union*, 346 U.S. 485, 490-491 (1953). No such danger of inconsistency arises here because there is no such administrative regime in the railway industry.

Furthermore, the Railway Labor Act procedures for settlement of so-called "major" disputes between rail carriers and their employees have all times been unavailable to respondent and the other carriers in the situation in which they found themselves as a result of petitioners' conduct. The regulatory system of the Railway Labor Act simply does not reach this conduct at all; nor—it hardly needs saying—does the Boiler Inspection Act or the remainder of the litany of irrelevant statutes invoked by petitioners. (Pet. 19)[14]

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[14] This recitation of statutes proves only the obvious fact that Congress has frequently exercised its power under the Commerce

The procedures of the Railway Labor Act—for conference, negotiation, mediation, arbitration, and conciliation—apply to disputes between carriers and their employees over terms and conditions of employment. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722-24 (1945); *Brotherhood of Railroad Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957). Respondent and the other carriers had no such dispute with their employees or with petitioners. The only dispute cognizable under the processes of the Railway Labor Act has been between petitioners and the FEC. There is no provision in the Act for settling controversies between a carrier and employees of another carrier, with whom it does not have a dispute over the terms and conditions of their employment. The Railway Labor Act does not address itself to the question of secondary conduct at all. No preemption decision of this Court would justify a holding that the Railway Labor Act ousts state law over a matter not even covered by the Act.[15]

Clause with respect to the railroad industry. This fact is the starting point of an inquiry into preemption; contrary to petitioners' apparent belief, in itself it settles nothing:

> "The constitutional decisions allocating to Congress power to enact labor legislation mean (1) that the national government may regulate labor relations, including strikes, boycotts, and picketing, and (2) that it may forbid the application of state laws, whether statutory or judge-made. Both propositions are true beyond dispute, but note that they are only permissive. The national government may choose not to exercise its power over labor relations or to use only part. The allocation of constitutional power to Congress does not automatically exclude the operation of state labor laws." Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1299 (1954).

[15] Petitioners' reliance on this Court's decision in *Brotherhood of Railway and Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966), as purportedly defining management's rights of self-help under Federal law, is thus entirely inapposite. The dispute in that case between the nonoperating brotherhoods and the

Indeed, even under the more extensive regulatory regime under the NLRA and LMRA—which explicitly deals in detail, for example, with secondary conduct, as the Railway Labor Act does not—this Court has upheld state authority to enjoin when the conduct or dispute involved is not cognizable under the Federal Act. See, *e.g., Hanna Mining Co.* v. *District 2*, 382 U.S. 181, 192-193 (1965); *Incres S.S. Co.* v. *International Maritime Workers Union*, 372 U.S. 24 (1963). In *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245 (1949), this Court said:

> "... the Federal Board has no authority either to investigate, approve or forbid the union conduct in question. This conduct is governable by the State or it is entirely ungoverned." 336 U.S., at 254.

See also *Garner* v. *Teamsters Union, supra*, 346 U.S. at 488.

It is clear that Congress had no purpose to make union conduct of the kind exhibited in the present case ungovernable by any authority, state or Federal. One can search the Railway Labor Act and the other Federal legislation in the railroad field in vain for any manifestation of such a legislative purpose. Congress' goals could scarcely have in-

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FEC was a "major" dispute cognizable under the processes of the Railway Labor Act. As the opinion of the Court pointed out: "The controversy centers about § 2 Seventh of the Act, which provides: 'No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act.'" 384 U.S., at 243. The precise question for adjudication was whether the self-help efforts of the FEC had violated this provision. Clearly this was a question of Federal law. On the other hand, the controversy in the present case between petitioners and respondent is not a dispute cognizable under the processes of the Railway Labor Act and no question as to the construction of that Act is presented here.

cluded the unbridled escalation of railway labor disputes against other carriers; its first goal was "to avoid any interruption to commerce or to the operation of any carrier engaged therein." Railway Labor Act, § 2(1) (Pet. App. 42a).[18] Federal law should not be found to supersede state law "'unless that was the clear and manifest purpose of Congress.'" *Florida Lime & Avocado Growers, Inc.* v. *Paul, supra,* 373 U.S., at 146, quoting from *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Indeed, in the LMRA, Congress set the national labor policy against secondary conduct of the kind involved in this case, albeit this policy is enforced under the LMRA only outside the rail and airline industries. Section 8(b)(4), 29 U.S.C. § 158(b)(4). There is nothing to suggest that Congress ever meant to clothe the kind of conduct here involved with federal protection where the rail industry was involved.

State law, therefore, cannot be held to be superseded in this case on the theory that Congress intended the conduct involved to be free from all regulation, despite its disruptive effects on commerce and persons not parties to the original dispute. When Congress has wanted conduct to be free from state regulation and to supersede state law in the railway industry, it has known how to do so explicitly. Thus, the 1951 amendment to the Railway Labor Act validating union shop agreements "expressly declares that state law is superseded." *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, 232 (1956).

As the foregoing discussion shows, there is no conflict between the application of state law in the present case and the Federal scheme of regulation; and "conflict is the touchstone of preemption." *San Diego Building Trades Council*

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[18] See *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966).

v. *Garmon*, 359 U.S. 236, 250 (1959) (concurring opinion of Harlan, J.). In the absence of an express declaration of supersession, the Railway Labor Act has been held to supersede state law only when enforcement of the state law would conflict with an express provision of the Federal Act. *California* v. *Taylor*, 353 U.S. 553 (1957);[17] contrast *Missouri Pac. R. Co.* v. *Norwood*, 283 U.S. 249, 258 (1931); *Terminal R. Ass'n* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1 (1943). Nor would application of state law here in any way disrupt the Federal regulatory scheme or interfere with the realization of congressional objectives. *Cf. Hill* v. *Florida*, 325 U.S. 538 (1945); *Teamsters Union* v. *Oliver*, 358 U.S. 283 (1959). On the contrary, state law here merely fills a gap in the regulatory scheme which Congress could not have intended to leave unfilled. State law as applied here is in harmony with the clearly manifested legislative purpose of maintaining rail traffic and with congressional disapproval of economic disruption caused by secondary pressure against innocent employers.

Finally, the state courts acted here to protect a vital interest in preventing the "economic strangulation" of the state. Protection of an interest of such magnitude is obviously a matter of the highest state concern. In the absence of any affirmative indication in the Federal legislation of a purpose to oust state law, supersession surely should not be inferred in these circumstances merely from the existence of Federal legislation in the railway industry.[18] Thus,

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[17] In the *Taylor* case, the state law forbade state employees to engage in collective bargaining, which was specifically authorized by the Railway Labor Act. This Court based its decision on the "conflict between federally protected collective bargaining and inconsistent state laws." 353 U.S., at 559-560, 560 n. 8.

[18] This case is thus at the other end of the spectrum from a case such as *Hines* v. *Davidowitz*, 312 U.S. 52 (1941), in which this

under the discriminating approach to problems of preemption and supersession evolved by this Court, all significant factors uphold the application of state law in this case.

2. *The Norris-LaGuardia Act has no application to state courts applying exclusively state law.*—Petitioners' contention that the Florida state courts lack power to issue an injunction in a case brought under Florida law because of the Norris-LaGuardia Act is insubstantial. The Act is plain on its face in limiting the jurisdiction *only of the Federal courts* to grant injunctive relief. The declaration of public policy in Section 2 of the Act states:

> "... the following definitions of and limitations *upon the jurisdiction and authority of the courts of the United States* are enacted." 29 U.S.C. §102 (emphasis supplied.)

The Act repeatedly states:

> "No court of the United States shall have jurisdiction [to grant injunctive relief in the enumerated situations]." §§ 1, 4, 5, 7, 29 U.S.C. §§ 101, 104, 105, 107.

The definitional section spells out the scope of the Act in terms which allow no room for dispute:

> "The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." § 13(d), 29 U.S.C. § 113(d).

Court held that a state alien registration law was superseded by Federal law because Congress was acting in a field of primary Federal concern, foreign relations, where the state's interest was at a minimum.

This language is so clear and unequivocal that no court, state or Federal, has held that the Norris-LaGuardia Act limits the historic equity jurisdiction of the state courts in actions based on state law. As the Court of Appeals for the Third Circuit has said:

> "There is nothing in the language of the Act or its legislative history which can possibly, within 'the range of judicial inventiveness,' or the process of judicial *fashioning*, be construed as extending to the jurisdiction of state courts." *American Dredging Co.* v. *Local 25*, 338 F.2d 837, 852 (3d Cir. 1964), *cert. denied*, 380 U.S. 935 (1965). (emphasis original)

In Justice Traynor's words:

> "The statute aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts . . . . It did not limit the remedial power of the state courts. . . ." *McCarroll* v. *Los Angeles Dist. Council*, 49 Cal. 2d 45, 63, 315 P.2d 322, 332 (1957), *cert. denied*, 355 U.S. 932 (1958).[19]

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[19] Other cases which have rejected the notion that the Norris-LaGuardia Act deprives the state courts of their historic equity powers are: *Ford* v. *Boeger*, 236 F. Supp. 831 (E.D. Mo. 1964); *United Electrical, Radio & Marine Workers* v. *Westinghouse Elec. Corp.*, 65 F. Supp. 420 (E.D. Pa. 1946); *Shaw Elec. Co.* v. *International B'hood of Elec. Workers*, 418 Pa. 1, 208 A.2d 769 (1965); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n*, 382 Pa. 326, 115 A2d 733 (1955), *cert. denied*, 350 U.S. 843 (1955); *General Building Contractors' Ass'n* v. *Local Union No. 542*, 370 Pa. 73, 87 A2d 250 (1952); *Curtis* v. *Tozer*, 374 S.W. 2d 557, 590-92 (Mo. App. 1964); *C. D. Perry & Sons, Inc.* v. *Robilotto*, 39 Misc. 2d 147, 240 N.Y.S. 2d 331 (Sup. Ct. 1963); *Southern Bus Lines* v. *Amalgamated Ass'n of Street Elec. Ry. & Motor Coach Employees*, 205 Miss. 354, 38 So.2d 765 (1949); *Markham & Callow* v. *International Woodworkers*, 170 Ore. 517, 567-68, 135 P.2d 727, 746 (1943).

In their classic work on the labor injunction, then-Professor Frankfurter and Mr. Greene wrote of the proposal which became the Norris-LaGuardia Act:

> "[It] explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220.

The principal reed which petitioners grasp on this point appears to be a footnote in this Court's opinion in *Charles Dowd Box Co.* v. *Courtney,* 368 U.S. 502, 514 n. 8 (1962), to the effect that: "The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court." Petitioners also point to *Avco Corporation* v. *Aero Lodge No. 735,* No. 445, O.T. 1967, 36 U.S.L.W. 4288 (1968), in which this Court reserved the same question.[20]

Obviously, the short answer to petitioners' suggestion that this case is an appropriate one to resolve the question referred to in *Charles Dowd* and *Avco* is that this case has nothing to do with that question. This case does not involve a state court applying Federal labor law but a state court applying state law. In *Charles Dowd* and *Avco,* this Court was simply alluding to the suggestion, mooted from time to time, that the Norris-LaGuardia restrictions on the Federal injunctive power are part of the Federal labor law and policy which Section 301 of the LMRA requires state courts to apply in Section 301 suits brought in the

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[20] The Court of Appeals' opinion in *Avco,* 376 F.2d 337, 343 (6th Cir. 1967), contains a dictum that state courts would be precluded by national labor policy from granting injunctive relief in a case *arising under Federal labor law* if a Federal court could not so do.

state courts. See *American Dredging Co.* v. *Local No. 25, supra.*[21]

Clearly, this question has no relationship to cases like the present one where a state court was requested to exercise its equity power in a suit brought to enforce state-created rights and governed by state law. Respondent based its suit in the Circuit Court exclusively on Florida law. The Circuit Court in granting the injunction relied on the common and statutory law of Florida: the common law of the state against secondary boycotts, and against unjustifiable interference with contractual relations and with the right to carry on business; and the statutory law, in that petitioners' conduct was an attempt to coerce respondent to violate its duty as a carrier under the Florida Transportation Act and to impose an embargo on the FEC in violation of the Florida Restraint of Trade laws.[22] The

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[21] Of course, suits under Section 301 are suits to enforce Federally-created rights and are governed by a corpus of Federal labor law. *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957).

[22] Petitioners contend there was not "clear proof" under Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, to hold two of them, the Order of Railway Conductors and Brakemen and the Brotherhood of Locomotive Firemen and Enginemen, responsible for the picketing. This contention of course fallaciously assumes that the Norris-LaGuardia Act applies in the state courts, and thus is no more substantial than petitioners' general contention on that point. See *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 737 (1966). In any event, it is clear that the two unions in question were acting in concert with the Brotherhood of Railroad Trainmen in arranging the picketing, since their names appeared on the signs carried by the pickets. (R. II, 116, 194)

Petitioners also urge, apparently again on the basis of the Norris-LaGuardia Act, that a party to a railway dispute who declines to "accept voluntary arbitration" as a means of settling this dispute should not be entitled to equitable relief. (Pet. 24-25) What relevance this could possibly have to the present case is mysterious. Respondent never had a chance to accept arbitration and never even knew it had a dispute with petitioners; it was picketed without warning on the morning of May 4, 1966, and it resorted to the

District Court of Appeals affirmed solely on the basis of Florida law. (See Pet. App. 7a-8a) Petitioners' argument on this point is so lacking in merit as to furnish no basis for the granting of certiorari.[22]

3. *The jurisdiction of the Florida courts to adjudicate an action brought exclusively under state law is not pre-empted by the jurisdiction of the NLRB.*—Petitioners contend that review is necessary to protect the "exclusive primary jurisdiction" of the NLRB over the controversy which gave rise to respondent's suit in the Florida Circuit Court. But it is perfectly plain from the language of the LMRA, the interrelationship of that Act with the Railway Labor Act, and the decided cases in this and other courts, that there is no NLRB jurisdiction over this controversy to protect. This controversy is not even "arguably subject" to NLRB jurisdiction. See *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959).

The definitional section of the LMRA is explicit in exempting controversies entirely within the railroad industry, as this one is, from the coverage of the Act and the juris-

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courts because the controversy was not cognizable under the Railway Labor Act.

[22] If certiorari is granted, however, we reserve the right to contend that the Norris-LaGuardia Act is not applicable here to preclude even a Federal court injunction, and that consequently, even if the same result must apply in a state court, the judgment below may stand. While this Court in 1966 affirmed a ruling that the Norris-LaGuardia Act precluded the exercise of Federal court jurisdiction, such an affirmance by an equally divided Court does not constitute a precedent binding on this Court. "The principles of law which have been argued cannot be settled" by such a judgment. *Etting* v. *Bank of the United States*, 11 Wheat. 59, 78 (1826). See *Ohio ex rel. Eaton* v. *Price*, 364 U.S. 263, 264 (1960) (dissenting opinion). We would accordingly propose to reargue the matter. We would also contend, for similar reasons, that if Federal law applies, it too permits the issuance of the injunction issued by the State court here.

diction of the NLRB. Section 2 of the Act provides in pertinent part:

> "(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any person subject to the Railway Labor Act, as amended from time to time. . . .
>
> "(3) The term 'employee' shall include any employee. . . . but shall not include . . . any individual employed by an employer subject to the Railway Labor Act, as amended from time to time. . . ." 29 U.S.C. §§ 152(2), (3).

"Labor organizations" are subject to the Act only if "employees" within the foregoing definitions participate in them:

> "(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5).

There is no dispute that all the participants in the controversy which led to the Circuit Court proceeding—the FEC, its employees, the Coast Line, the Seaboard, the Terminal Company,[24] their employees, and the petitioners —are persons subject to the Railway Labor Act. There is

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[24] Terminal Company is a "carrier" under the Interstate Commerce Act, § 1(3), 49 U.S.C. § 1(3), and is subject to the Railway Labor Act by reason of § 1 First thereof, 45 U.S.C. § 151 First, Pet. App. 40a.

likewise no doubt that their labor relations with each other are excluded from the coverage of the LMRA. As this Court has often made clear, the Railway Labor Act is the Federal legislation providing a system for the settlement of disputes within the railroad industry. See, *e.g.*, *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U.S. 711 (1945); *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30 (1957).

It makes a mockery of this scheme for dealing with labor controversies in the railroad industry to suggest that Congress also superimposed on it the regulatory regime of the LMRA and the potentially conflicting jurisdiction of the NLRB. The authors of the LMRA made it plain that they had no such purpose:

> "The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies for unfair labor practices of unions and their agents [in the LMRA] it was not intended to include such employees." S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 19.

As this Court has said:

> "The Act, in its definition of an 'employer,' expressly excludes anyone subject to the Railway Labor Act. 61 Stat. 137, 29 U.S.C. § 152(2). It is of course true that employer-employee relationships of railroads such as respondent are governed by the Railway Labor Act, which was passed before either the National Labor Relations Act or the Labor Management Relations Act. Neither of the latter Acts was intended to tread upon the ground covered by the Railway Labor Act. It is clear that neither railroads nor their employees may

carry their grievances with one another to the N.L.R.B. for resolution. . . ."

"We think it clear that Congress, in excluding 'any person subject to the Railway Labor Act' from the statutory definition of 'employer,' carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York, N. H. & H. R. Co.*, 350 U.S. 155, 159-60 (1956).[25]

The authorities relied on by petitioners as upholding NLRB jurisdiction at the instance of, or over, certain persons subject to the Railway Labor Act are all inapposite. In each such case, at least one of the other participants in the controversy was a person clearly subject to the LMRA and the controversy did not involve relationships entirely within the railway industry.[26]

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[25] See also *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F.2d 642, 646-47 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 869 (1951); *NLRB* v. *Interior Enterprises*, 298 F.2d 147 (9th Cir. 1961); *Bruno* v. *Northeast Airlines*, 229 F. Supp. 716, 717 (D. Mass. 1964).

[26] Thus, in *Local Union No. 25* v. *New York, N.H. & H.R. Co.*, *supra*, this Court merely held that a railroad could invoke the processes of the NLRB against conduct of the Teamsters Union which was engaged in a dispute with certain motor carriers. Neither the Teamsters nor the motor carriers were persons subject to the Railway Labor Act with respect to their labor relations with each other, and the railroad had no labor dispute with any railway employees.

Similarly, in *International Brotherhood of Electrical Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966), the Court of Appeals affirmed the assertion of NLRB jurisdiction over unions subject to the Railway Labor Act solely on the ground that they were "agents" of and "joint venturers" with other unions which were subject to the LMRA. The unions were engaged in unlawful secondary picketing of persons not subject to the Railway Labor Act, and Section 8(b) of the LMRA imposes liability for unfair labor practices by "a labor organization *or its agents*." 29

In the present case, nobody asserts that either petitioners, respondent, the Coast Line, the Seaboard, the FEC, or any of their employees related to the present matter are subject to the LMRA with respect to labor matters wholly within the railway industry, or are acting as agent for, or joint venturer with, any persons subject to the LMRA. *Cf. International Brotherhood of Electrical Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966). All the petitioners "are composed predominantly and overwhelmingly of employees of employers subject to the Railway Labor Act." (R. II, 124) All the pickets were employees of an employer subject to the Railway Labor Act and were members of local lodges composed solely of employees of employers subject to the Railway Labor Act. (R. II, 124-125) It is paradoxical to suggest that this matter is "arguably" subject to the jurisdiction of the NLRB when no one has been willing to step forward and make any such argument. Petitioners have been careful not to do so, perhaps understandably in view of their concession that the conduct alleged against them would be an illegal secondary boycott if Section 8(b)(4) of the LMRA applied. (Pet. 27) Indeed, in their prior Petition for Certiorari, the petitioners

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U.S.C. § 158(b) (emphasis supplied). See 150 N.L.R.B. No. 37, 57 L.R.R.M. 1526 (1964). There is no claim here of any "agency" or "joint venture" with a party subject to the LMRA.

Marine Engineers Beneficial Ass'n v. *Interlake Steamship Co.*, 370 U.S. 173 (1962), held merely that the NLRB had exclusive primary jurisdiction to determine whether the Marine Engineers was a "labor organization" under Section 8(b) of the LMRA, or was excluded from the coverage of the Act because it represented only "supervisors." The NLRB had previously laid down principles for determining a "labor organization" which made it clear that it would assert jurisdiction over the Marine Engineers. No such issue is presented in the instant case, nor do petitioners contend they are a "labor organization" under the LMRA. Moreover, Marine Engineers did not involve the specific exclusion of controversies within the railway industry from the coverage of the LMRA.

"candidly and earnestly submit that their status is such that they are *not* covered by the L.M.R.A." (Petition for Certiorari, No. 244, O.T. 1966, p. 16, emphasis original).

It bears reemphasis that every member of the cast of characters in the events forming the basis of respondent's suit in the Circuit Court is a person subject to the Railway Labor Act, and this case exclusively concerns relationships within the railway industry.[27] No case has held the LMRA applicable in such a situation, and for good and obvious reasons. If this case is one "arguably" within the jurisdiction of the NLRB, it would be hard to imagine a railway labor case which was not. If petitioners are "arguably" subject to the LMRA simply because they are "mixed" unions representing a few non-railroad employees, any dispute between these petitioners and any carrier in the United States would be cognizable before the NLRB. Indeed, under petitioners' reasoning, any controversy between any rail carrier and any railway union representing its employees and also representing any non-railway employee anywhere—and many do—could be brought before the NLRB. The opportunities for conflict between the two different regulatory systems would proliferate and the exception which Congress carefully preserved in the LMRA would become a nullity.[28]

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[27] "There are two major Federal Labor statutes that deal with the matter of labor disputes affecting interstate commerce, and they are not at all similar. They are very dissimilar. They have different approaches to the problem.

"One of them, of course, is the Taft-Hartley Act.

"The other one is the Railway Labor Act.

"Now, this is a pure Railway Labor Act dispute."

Argument on behalf of the present petitioners, in *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen*, U.S.D.C., M.D. Fla., May 4, 1966, Tr. 81 (subsequently 385 U.S. 20 (1966)).

[28] This is not to say that the broad national policies which Congress has laid down in the LMRA may be ignored in construing the

4. The First and Fourteenth Amendments do not prevent the limited injunction against picketing entered in this case. —Petitioners concede, as they must, that the injunction in this case was a limited one and did not ban all picketing of respondent's premises. (Pet. 30) It specifically allowed petitioners to picket at the gate designated for use by employees of the FEC, the only employer with which petitioners had a labor dispute.[22] (Pet. App. 5a-6a) The picketing restrained by the injunction was admittedly engaged in by petitioners to "stop all movement of rail traffic" through the Jacksonville Terminal and had as its objective coercing respondent and the other carriers to cease interchanging cars with the FEC. (R. III, 16-17, 120-121)

The suggestion that the First and Fourteenth Amendments immunize conduct of this character—bringing pressure on respondent and the other carriers to violate state laws—flies in the face of this Court's careful decisions over many years upholding state authority to regulate

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Railway Labor Act or in any judicial consideration of railway labor questions. But obviously the specific administrative regulatory regime of the NLRB under the LMRA is completely foreign to a matter like the present one.

[22] Petitioners claim that the separation of the FEC workers from the other workers at the reserved gate was not well policed (Pet. 30), but if so, petitioners' remedy does not lie in a denial of state court power to pass any injunction under the circumstances. Petitioners made no application for conditions on the trial court's injunction which would have insured policing of the reserved gate procedure. Indeed, it was stipulated in the trial court that petitioners never complained to Terminal Company of any lack of policing of the reserved gate procedure. (R. II, 126) The petitioners' position is simply that they are permitted to picket so as to cut all rail movements through the terminal, including picketing the main lines of the Coast Line and Seaboard and stopping main line trains, as the record indicates was done. (R. III, 91, 92; R. IV, 9-17; Plaintiff's Ex. 1)

picketing. As this Court said in *Cox* v. *Louisiana*, 379 U.S. 536, 555, 563 (1965):

> "We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech."

> "The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association. This principle has been applied to picketing and parading in labor disputes."

Thus, in many cases this Court has upheld state restraints on picketing which was designed to bring about objectives made illegal by state law, as against claims of violation of the First and Fourteenth Amendments. In *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490 (1949), this Court held that a state could validly apply its restraint of trade law to enjoin employees from picketing to induce an employer not to do business with non-union employers; as in the present case, there was no dispute between the picketed employer and the employees, except that he did business with the real objects of their campaign, the non-union employers. This Court said:

> "[P]lacards used as an essential and inseparable part of a grave offense against an important public law cannot immunize that unlawful conduct from state control . . . . it has never been deemed an abridgement of freedom of speech or press to make a course of con-

> duct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. [citations omitted] Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society . . . . [The state] has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. . . . We hold that the state's power to govern in this field is paramount, and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its antitrade-restraint law to groups of workers, businessmen or others." 336 U.S., at 502, 504.

See also *Hughes* v. *Superior Court,* 339 U.S. 460 (1950); *Building Service Employees* v. *Gazzam,* 339 U.S. 532 (1950); *Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl,* 315 U.S. 769, 775, 776 (1942) (Douglas, J., concurring); *cf. Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.,* 335 U.S. 525, 531 (1949).

Here the injunction did not ban all picketing *per se,* whatever its location or its objective. The decree was framed to deal with the specific factual situation before the Court. It protected the petitioners' right to communicate the fact of their dispute with the FEC and to appeal to FEC employees not to cross the picket line. At the same time, it protected the right of respondent and the other carriers to be free of conduct designed to coerce them to violate state law. As was true in *Building Service Employees* v. *Gazzam, supra:*

"The injunction granted was tailored to prevent a specific violation of an important state law. The decree was limited to the wrong being perpetrated, namely, 'an abusive exercise of the right to picket.'" 339 U.S., at 541.[30]

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[30] *American Federation of Labor* v. *Swing*, 312 U.S. 321 (1941), relied on by petitioners, merely held that a state ban on all picketing of an employer by persons who were not his employees violated their freedom of speech. 312 U.S., at 325. The decree in this case does not ban all picketing of respondent's premises. *Swing* does not even remotely imply that a state is without power to limit the permissible scope of picketing so as to prevent coercion of a person into violating state law.

Likewise, in its recent decision in *Food Employees Local 590* v. *Logan Valley Plaza, Inc.*, No. 478, O.T. 1967, 36 U.S.L.W. 4385 (1968), this Court held that a state cannot ban *all* picketing in a large commercial shopping center open to the public on the sole ground that the pickets are not employees of the picketed employer or on the ground that the property is privately owned. The decision, as this Court made clear, simply reaffirmed the principles of *Swing* and *Marsh* v. *Alabama*, 326 U.S. 501 (1946):

> "All we decide here is that because the shopping center serves as the community business block and is freely accessible and open to the people in the area and those passing through, *Marsh* v. *Alabama*, 346 U.S., at 508, the State may not delegate the power, through the use of its trespass laws, *wholly to exclude* those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put." 36 U.S.L.W., at 4388. (emphasis supplied)

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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